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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-920

DAN D. WEINER
Petitioner,

v

DAYTON BAR ASSOCIATION
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The petitioner, Dan D. Weiner, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Ohio Supreme Court.

OPINIONS BELOW

The opinion below is reported at 40 Ohio State 2d 7. It is appended hereto as Appendix A.

JURISDICTION

The judgment of the court below (Appendix B-1, **infra** P. A-10) was entered on October 16th, 1974. A timely petition for rehearing was denied on November 1, 1974 (Appendix B-2, **infra** P. A-12) and a second timely petition for rehearing and to reopen the matter for presentment of newly discovered evidence was denied on November 29th, 1974. (Appendix B-3, **infra** P. A-13.) The jurisdiction of this court is invoked under the provision of 28 U.S.C. Sec. 1257 (3).

QUESTIONS PRESENTED

Petitioner, who was admitted to the practice of law in the State of Ohio in 1963, was found guilty of violation of four provisions of the Code of Professional Responsibility and was suspended by the Ohio Supreme Court for an indefinite period from the practice of law in the State of Ohio. The questions presented are:

1. Whether a state may, consistent with due process of law required by the Fourteenth Amendment of the United States Constitution, suspend an attorney from the practice of law when he has been denied fair notice of the charges made against him?

2. Is an attorney denied due process of law in a disbarment proceeding when the Supreme Court of Ohio holds him to be guilty of a violation of a canon of ethics with which he was not originally charged?

3. Is an attorney denied due process of law in a disbarment proceeding when the Supreme Court of Ohio holds him to be guilty of a violation of a canon of ethics with which the investigating panel ruled not to be in issue and in accordance with said ruling no evidence was submitted by petitioner on that charge?

4. Whether a state may, consistent with the equal protection of contract law to which all citizens are entitled under the Fourteenth Amendment of the United States Constitution, suspend an attorney from the practice of law for failure to file a final decree of divorce where the attor-

ney has a contractural agreement with the client that the final decree was not to be filed until his fees were paid in full and the client breaches the contract by not making payments?

5. Is an attorney denied due process of law in a disbarment proceeding when the Ohio Supreme Court finds him guilty of a violation of a canon of ethics pertaining to a client who neither appears nor testifies in the proceedings, thereby denying him of his right to confront and cross-examine the witnesses and accusers against him?

FEDERAL CONSTITUTIONAL PROVISIONS AND CANONS OF PROFESSIONAL RESPONSIBILITY INVOLVED

The Fourteenth Amendment to the Constitution of the United States reads in part:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce anv law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Canons of Professional Responsibility involved are:

- Canon DR 2-106 Fees for Legal Services.
- Canon DR 2-110 Withdrawal from Employment.
- Canon DR 9-102 Preserving Identity of Funds and Property of a Client.

These Canons are set forth in their entirety in Appendix C-3, infra P. A-17.

STATEMENT OF FACTS

Petitioner is an attorney admitted to the Bar of Ohio in 1963. He was tried before a panel of three members of the state disciplinary committee. A report was then issued to the Ohio Supreme Court by the entire committee and the Ohio Supreme Court found the petitioner guilty of certain offenses and suspended him from the practice of law in the State of Ohio for an indefinite period of time.

Petitioner filed a motion for rehearing, which was denied. A second motion for a rehearing coupled with one to reopen the matter to enable him to present newly discovered evidence was also denied.

Petitioner was charged by the Dayton Bar Association with violation of 6 Canons of Professional Ethics. (See Appendix C-1, **infra** P. A-14) To these charges petitioner submitted interrogatories to be answered by the Dayton Bar Association. (See Appendix C-2, **infra** P. A-15)

These interrogatories were never answered by the Dayton Bar Association, nor are there any procedural sanctions whereby petitioner could require that the interrogatories be answered.

The Ohio Supreme Court found petitioner guilty of DR 9-102 (B) (3) although he was never charged by the local bar association with a violation of that canon.

The Ohio Supreme Court also ruled that petitioner withdrew from representation of a client named Garrett in violation of Canon DR 2-110 (A) (2) and that he was guilty of charging Mr. Garrett excessive fees in violation of DR 2-106. Mr. Garrett never made a complaint against petitioner nor did he testify or even appear against petitioner during the disciplinary hearing. Furthermore during the disciplinary hearing the panel members stated that the question of the amount of the fees was not in issue before them.

The Ohio Supreme Court also ruled that petitioner had withdrawn from representation of a client named Ison in violation of Canon DR 2-110 (A) (2). Mrs. Ison likewise had never filed a complaint against petitioner with the

local bar association. The Ison case involved a divorce matter. Petitioner proceeded forward with a final hearing on the divorce with the understanding and agreement with the client that the decree would not be filed until petitioner's fees were paid in full. After the hearing Mrs. Ison made no additional payments. The court dismissed the matter and petitioner notified Mrs. Ison by letter of the dismissal, asking her to contact him if she wanted to salvage the matter. Hearing no response from Mrs. Ison, petitioner assumed that she and her husband had reconciled. Meanwhile Mrs. Ison contacted another attorney who filed her final decree of divorce.

The constitutional issues presented herein were raised by petitioner in his motion for rehearing after the Supreme Court made its findings of fact and decision. Because of the nature of the proceedings, these issues did not arise until after that decision was rendered.

REASONS FOR GRANTING THE WRIT

This case is of importance to every practicing attorney in the United States.

The vast majority of disciplinary cases involve a clear cut violation i.e. commission of a crime involving moral turpitude. The recent wave of national prominence attached to the attorneys participating in the Watergate scandals has created additional emphasis making disciplinary action a matter of great public concern.

The United States Supreme Court has set up certain guidelines in the following cases: **Schware v Board of Bar Examiners,** 353 U.S. 232, **Spevack v Klein,** 385 U.S. 511 and **In re Ruffalo,** 390 U.S. 544.

This case involves an area where these guidelines have not yet reached and will assist in the establishment of further guidelines firming up the canons of ethics and adding uniformity in their regulation, interpretation and enforcement. This case reaches beyond into an area that needs additional clarification by the United States Supreme Court as to the constitutionality of the disciplinary proceedings for the entire bar of all states.

From the beginning to the end of his case, petitioner has been denied procedural and substantive due process.

1. Upon receipt of the complaint setting forth six counts of violations, petitioner filed interrogatories requesting that he be advised in detail of the charges against him (Appendix C-2, **infra** P. A-15). The Dayton Bar Association refused to answer them. Furthermore the Ohio procedure fails to provide any method to enforce or require that interrogatories be answered.

The Ohio Supreme Court found petitioner guilty of Canon 9-102 (B) (3), "Failure to maintain complete records of all funds . . . coming into the possession of a lawyer and render appropriate accounts to his client regarding them." However, petitioner was never charged with a violation of that section of the canon and was therefore never given an opportunity to present evidence to rebut that particular finding.

The Ohio Supreme Court found petitioner guilty of charging Mr. Garrett excessive fees in violation of DR 2-106. During the disciplinary hearing one panel member stated, "The question of the amount of the fee isn't involved." Another panel member stated "I don't think it is the question of the amount of the time or the difficulty of the case or the amount of the fee . . . I don't think we are concerned with the merits of the case against Mr. Garrett. I don't think we are concerned with that or the amount of the fee." Petitioner presented no testimony on that issue.

Each of the above demonstrates a clear violation of the principles and guidelines established by the United States Supreme Court in **In re Ruffalo,** supra.

> "Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. **Ex parte Garland,** 4 Wall. 333, 380; **Spevack v Klein,** 385 U.S. 511, 515. He is accordingly entitled to procedural due process, which includes fair notice of the charge. See **In re Oliver,** 333 U.S. 257, 273. It was said in **Randall v Brigham,** 7 Wall. 523, 540, that when proceedings for disbarment are 'not taken for matters occurring in open court, in the

presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense.' " **In re Ruffalo,** supra, 550.

The United States Supreme Court, also in establishing due process notice requirements, stated in **In re Gault,** 387 U.S. 1 at P. 33:

"Notice, to comply with due process requirements, must be sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.' "

A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process clause of the Fourteenth Amendment. **Schware v Board of Bar Examiners of New Mexico,** supra, P. 238.

The absence of fair notice as to the reach of the disciplinary hearing, failure of the local bar association to advise as to the precise nature of the charges, finding petitioner guilty of a canon with which he was not charged and of another canon which the panel members ruled not in issue clearly deprived petitioner of procedural due process.

2. The Ohio Supreme Court found petitioner guilty of violating two separate canons of ethics pertaining to his representation of client Garrett. Garrett never appeared nor testified before the disciplinary panel therefore petitioner was denied an opportunity to cross-examine Mr. Garrett on these particular charges. Furthermore, Mr. Garrett never filed or registered a complaint against the petitioner.

The United States Supreme Court in **Pointer v Texas,** 380 U.S. 400 at P. 405 stated:

"There are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-

> examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal. Indeed, we have expressly declared that to deprive an accused of the right to cross-examine the witnesses against him is a denial of the Fourteenth Amendment's guarantee of due process of law." **In re Oliver**, 333 U.S. 257, **Douglas v Alabama**, 380 U.S. 415.

The United States Supreme Court has already determined that disbarment proceedings are adversary proceedings of a quasi-criminal nature. **In re Ruffalo, supra**, 551. Therefore, the standards of **Pointer v Texas, supra** are applicable in petitioner's case.

3. The Ohio Supreme Court found that petitioner's failure to file a final decree of divorce constituted a violation of the canon of ethics, regardless of the fact that the client had contractually agreed that the final decree would not be filed until payment of the fees was made and regardless of the fact that the client breached the contract by not making any additional payments whatsoever.

The facts involved are simple. Petitioner agreed to go forward with a final hearing of divorce with the understanding that full payment would be made by the client before the decree would be filed. Client made no payments after the hearing.

The issues involved are just as simple. Are attorneys second-rate citizens? Are attorneys to be denied their contractual rights?

The Ohio Supreme Court itself has set up the principles that should be applicable in this case but which were denied to petitioner.

> "Contracts and compacts have been entered into between men, tribes and nations during all time from the earliest dawn of history, and the right and liberty of contract is one of the inalienable rights of man, fully secured and protected by our constitution." **Palmer & Crawford v Tingle**, 55 O.S. 423, 441.

> The right to contract freely with the expectation that the contract shall endure according to its terms is as fundamental to our society as the right to write and to speak without restraint. **Blount v Smith,** 41 O.O. 2d 250, 253.

As the right of private contract is no small part of the liberty of the citizen, the usual and most important function of the courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appears that they contravene public right or the public welfare. **Baltimore & O.S.W.R. Co. v Voigt,** 176 U.S. 498.

Justice Douglas speaking for the United States Supreme Court in **Spevack v Klein,** supra, has already established that lawyers also enjoy first-class citizenship.

The ruling of the Ohio Supreme Court clearly denied petitioner and all other attorneys their right of enforcing contracts with clients, in fact forcing petitioner and his fellow lawyers to engage in a condition of involuntary servitude, all in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

CONCLUSION

For the reasons set forth above and in view of the fact that the canons of ethics have been adopted by the majority of States in their present form, there is a need to extend the guidelines already established by the Court into the area involved in this case and a writ of certiorari should issue to review the judgment and opinion of the Ohio Supreme Court.

Respectfully submitted

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APPENDIX

APPENDIX A

DAYTON BAR ASSOCIATION *v.* WEINER.

40 Ohio St. 2d 7.]

Attorneys at law — Misconduct — Acts warranting indefinite suspension.

(No. D.D. 74-6—Decided October 16, 1974.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

Respondent, Dan D. Weiner, was admitted to the practice of law in Ohio in 1963, and has, since then, engaged in such practice in the city of Dayton.

This disciplinary matter came before the Board of Commissioners on Grievances and Discipline upon the complaint and certificate of the Dayton Bar Association, alleging certain violations by respondent of the Code of Professional Responsibility.

The complaint enumerates respondent's alleged willful breach of six specific portions[1] of the Code: Canon 1, EC 1-5[2]; Cannon 1, DR 1-102 (A) (5)[3]; Canon 2, DR

[1] The disciplinary rules and ethical considerations contained in the Code of Professional Responsibility are commonly denoted DR and EC, respectively.

[2] EC 1-5 reads:

"A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude."

[3] DR 1-102(A) (5) reads:

"MISCONDUCT.

"(A) A lawyer shall not:

"* * *

"(5) Engage in conduct that is prejudicial to the administration of justice."

2-106 (A)[4]; Canon 2, DR 2-110 (A) (2)[5]; Canon 7, DR 7-106 (C) (6)[6]; and Canon 9, DR 9-102[7].

[4]DR 2-106 (A) reads:

"FEES FOR LEGAL SERVICES.

"(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee."

[5]DR 2-110 (A) (2) reads:

"WITHDRAWAL FROM EMPLOYMENT.

"(A) In general.

"* * *

"(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."

[6]DR 7-106 (C) (6) reads:

"TRIAL CONDUCT.

"* * *

"(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

"* * *

"(6) Engage in undignified or discourteous conduct which is degrading to a tribunal."

[7]DR 9-102 reads:

"PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT.

"(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

"(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

"(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

"(B) A lawyer shall:

"(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

I

The charges for violating Canon 1, EC 1-5 and DR 1-102 (A) (5) relate to respondent's alleged misconduct before Neal F. Zimmers, Jr., Judge of the Montgomery County Court and Harold H. Galbraith, Judge of the Vandalia Municipal Court. Respondent was found guilty of contempt of court in a matter before Judge Zimmers, and the facts surrounding that occurrence are found in *State* v. *Weiner* (1974), 37 Ohio St. 2d 11, in which case this court affirmed the contempt citation.

The incident before Judge Galbraith may be summarized as follows: In the course of his closing argument as defense counsel in a criminal trial, respondent said, "I want you to listen to the court's instructions and don't be trapped by the court's instructions." Judge Galbraith immediately ordered counsel into chambers and admonished respondent. Upon returning to the courtroom, respondent said to the jury, "I apologize for whatever I said" and "don't let the judge's instructions confuse you on aiding and abetting." At this juncture, the court declared a mistrial, and cited respondent for contempt. Later, however, Judge Galbraith withdrew the contempt charge. The board concluded that the evidence was insufficient to sustain a willful breach of Canon 1, EC 1-5 and DR 1-102.

II

The charges for violating Canon 2, DR 2-106 (A) relate to respondent allegedly charging or collecting illegal or clearly excessive fees from five of his clients: Harry E. Garrett, Jr., Maggie Williams, Richard A. Parr, Fred M. Miller and Shirley Ison.

The facts of the Garrett case are found in *State* v. *Weiner, supra,* and the board found a violation of DR 2-106 (A).

"(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

"(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

"(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."

The basis for the charge of respondent's breach of DR 2-106 (A) in the Maggie Williams matter is that respondent charged an excessive fee for representing her in a shoplifting prosecution and for making a settlement with a house-siding contractor. The board found however that the evidence was insufficient to sustain the count and recommended that it be dismissed.

Richard A. Parr was represented by respondent in a trespassing prosecution, which ended in a jury verdict of acquittal. Parr testified that he was unable to pay a requested $100 retainer, that respondent later advised him that the fee would be on an hourly rate of $50 per hour, and that it would run "around $500." After the trial, respondent requested and received $1,500 for his services. The board found that the fee charged was not excessive, and recommended that the count be dismissed.

Fred M. Miller consulted respondent in connection with a contempt proceeding for nonpayment of child support. Miller admitted that respondent had advised him at the outset that the services would be charged at an hourly rate and that an exact bill could not be given, but that it would be $100 to $150. After representing Miller, respondent tendered a statement for $315 for 7 hours and 55 minutes, to which Miller objected. The board found that the evidence was insufficent to sustain the count and recommended that it be dismissed.

Shirley Ison consulted respondent about obtaining a divorce. Respondent allegedly quoted a fee of $300. Respondent filed the necessary papers, later discovering that Mrs. Ison had reconciled with her husband. Subsequently, Mrs. Ison requested that respondent reinstitute the divorce proceedings. Respondent again filed the necessary papers, but experienced unusual complications in making service of process on his client's husband. Fourteen months after commencement of the original filing, Mrs. Ison obtained an uncontested divorce. Respondent submitted a total bill for $1,068 based upon an hourly rate, to which bill Mrs. Ison objected. The board found that the evidence was insufficient to sustain the count and recommended that it be dismissed.

III

The charges for violating Canon 2, DR 2-110 (A) (2), *supra*, relate to respondent allegedly withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of three of his clients: Garrett, Maggie Williams, and Shirley Ison.

The facts surrounding respondent's misconduct in connection with Garrett are fully reported in *State* v. *Weiner*, *supra*, and may be summarized as follows: Respondent was having difficulty in collecting the remainder of a retainer fee from Garrett. Garrett informed respondent that he desired to procure other counsel. Respondent did not object, and advised Garrett to be present with his new attorney at the trial. Respondent allegedly informed the prosecutor of his withdrawal from the Garrett case, asked that the information be passed along to the trial judge, and requested a return call if problems developed. On the date of the trial, Garrett appeared at the courthouse without counsel, and respondent failed to appear there or at another trial he had scheduled for that day, allegedly because he was ill and remained at home. The board found that respondent's conduct constituted a breach of DR 2-110 (A) (2), *supra*, but recommended that "if this charge stood alone it would merit a reprimand, probably a public reprimand."

Respondent's misconduct toward Maggie Williams, on this count, is reported by the board as follows:

"Prior to what defendant [Williams] thought was the final hearing defendant had paid $320 and gave respondent a check for $50 which he marked 'account paid in full' but in an ante room prior to the supposed final hearing, respondent informed defendant that he had billed her $50 an hour for everything and pulled out a $540 note for defendant to sign; that if defendant didn't sign he would merely leave it up to the judge. I will walk out and mark it off as a bad cause; that defendant could spend as much as 90 days in jail plus a $500 fine. After some remonstrance defendant's husband signed the $540 note and respondent required addition of words 'on siding' to words 'account

paid in full' to last $50 check. Respondent then went into court and pleaded defendant guilty of lesser offense of trespassing, was assessed a fine of $100, which was paid out of her cash appearance bond.

"Defendant was of the opinion she was to be tried by court without a jury but respondent testified he had prearranged with the prosecutor to accept the plea to a lesser offense of trespassing."

Upon these facts the board concluded:

"The threat of withdrawal from employment under the circumstances here indicated is a breach of Canon 2, Disciplinary Rule 2-110 and would certainly merit a public reprimand if standing alone."

Respondent's alleged misconduct toward Shirley Ison may be summarized as follows: On August 9, 1971, Mrs. Ison obtained an oral decree of divorce from the bench. Several months later, respondent advised Mrs. Ison that she was not divorced because the $488 fee balance had not been paid, and that her case would be dismissed unless a judgment entry were filed. The judge inquired of respondent why the judgment had not been filed. Respondent responded that "he wasn't going to put it [the decree] on" as Ison had paid him but $600 on a fee of over $1,000. Whereupon, another attorney put the decree on at the judge's request.

Upon these facts the board concluded:

"* * * Refusal to proceed to hearing until fees are secured or paid is one thing; refusal to put on the entry after the hearing, which refusal has the effect of working a dismissal, is an entirely different matter," and constituted a willful breach of Canon 2, DR 2-110, *supra*.

IV

The charges relating to respondent's alleged breach of Canon 7, DR 7-106 (C) (6), *supra*, are unspecified in the report of the board, and will therefore be regarded as abandoned.

V

In the final count, respondent is charged with:

"Willful breach of Canon 9, Dr 9-102 in that respondent caused funds of clients to be deposited in bank accounts maintained without the state of Ohio in which were funds belonging to respondent, and in that respondent converted to his own use trust funds belonging to his clients."

The facts concerning the first portion of this count are reported by the board, as follows:

"Prior to 1964 respondent established a checking account in Creve-Couer, Missouri, which account he designated as a trust account and has continued to use this account and this account was still in existence at the time of hearing. Since coming to Dayton he also established two trust savings accounts in Homestead Savings and Loan in Dayton from which and to which he has transferred funds from and to the trust checking account in Missouri. He has established an Ohio trust account in First National Bank, Dayton, in March, 1973. Respondent could not tell how much in the various accounts was his own funds and how much was funds of various clients, merely that he had more funds in these accounts than he owed to clients, and that he had no general or master ledger or account to which he or any employee of his could refer and determine and report the exact amount of clients' funds in each account. He further indicated that interest from the trust savings accounts was paid to him and that he paid income taxes on the same and did not apportion it to the various clients' funds. This commingling of funds has existed for nearly a decade and was not terminated after the filing of the complaint, continuing apparently at the time of the hearing. This situation is in sharp contrast with his detailed bookkeeping, billing and collecting methods in evidence as to attorney fees. His handling of his trust accounts and clients' funds and his persistence in using a foreign trust account or an account designated by him as a trust account in another state constitutes a clear and willful breach of Canon 9 and Disciplinary Rule 9-102 (A) and

(B) (3) and is misconduct as defined in Section (5) (a) of Rule V of the Supreme Court Rules For The Government Of The Bar Of Ohio."

The second portion of the count relates to respondent's alleged mishandling of funds entrusted to him by a client, William H. Turner, which is summarized as follows: Turner consulted respondent in order to obtain custody of his son who resided with his mother in Kentucky. Respondent required Turner to deposit with him $480 "cash in trust for back child support" before he would undertake a custody proceeding. Turner delivered the $480 to respondent, but the custody matter was never filed. Subsequently, respondent advised Turner that, unless arrangements were made to start regular payment of attorney fees, respondent would apply the trust fund to his fees. Respondent eventually applied the trust deposit to his fees without Turner's consent, for which the board found a willful breach of Canon 9, DR 9-102, *supra*.

VI

The recommendation of the board reads as follows:

"In view of the collective and cumulative evidence of misconduct, and an apparent basic indisposition to a proper conduct of the practice of law with the interests of clients subordinated to his own interests in his mind, it is the recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio that respondent, Dan D. Weiner, be suspended for an indefinite period of time from the practice of law as provided in Section (6) (b) of Rule V of the Supreme Court Rules For The Government Of The Bar Of Ohio."

The matter is now before this court for consideration of the report of the board and the objections of respondent.

Mr. Richard G. Snell and *Mr. Fred M. Izenson,* for relator.

Mr. Horace W. Baggott and *Mr. Raymond A. White,* for respondent.

Per Curiam. We have examined the record of the testimony taken at the hearing before the Board of Commissioners on Grievances and Discipline and the exhibits presented by both relator and respondent. After a careful analysis of such evidence as to each count passed upon by the board, this court agrees that the record amply supports the findings of the board that respondent has violated the provisions of Canon 1, DR 1-102 (A) (5); Canon 2, DR 2-106 (A); Canon 2, DR 2-110 (A) (2); and Canon 9, DR 9-102, and that, therefore, respondent is guilty of misconduct as defined in Gov. R. V (5) (b).

We affirm the findings of the board and overrule respondent's objections thereto.

We come now to the recommendation of the board that respondent be suspended for an indefinite period from the practice of law pursuant to Gov. R. V (6) (b). In our review of the whole record, and in consideration of respondent's objections and contentions, we find no facts in mitigation or justification of his actions.

Therefore, the findings and report of the Board of Commissioners on Grievances and Discipline are confirmed, and it is the judgment of this court, pursuant to Gov. R. V (6) (b), that respondent, Dan D. Weiner, be suspended for an indefinite period from the practice of law.

Judgment accordingly.

O'NEILL, C.J., HERBERT, CORRIGAN, STERN, CELEBREEZE, W. BROWN and P. BROWN, JJ., concur.

APPENDIX B-1

The Supreme Court of the State of Ohio
Of the Term of January, 1974.

To-wit: October 16, 1974.

Dayton Bar Association, Relator,
v.
Dan D. Weiner, Respondent.

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE DD No. 74-6

In appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on June 7, 1974, recommending that the respondent, Dan D. Weiner, be indefinitely suspended from the practice of law, pursuant to Rule V, Section 6b of the Supreme Court Rules for the Government of the Bar of Ohio, and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued by counsel. On consideration thereof, it is ordered and adjudged by this Court that the report of the Board be confirmed and respondent suspended from the practice of law for an indefinite period.

The respondent, Dan D. Weiner, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights,

privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, Dan D. Weiner, surrender his certificate of admission to practice to the Clerk of this Court forthwith and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, Dan D. Weiner, pay the costs of these proceedings taxed in the amount of Two Thousand Two Hundred Ninety Seven Dollars and twenty-eight cents ($2,297.28).

It is further ordered that the Clerk of this Court issue certified copies of this entry as provided for in Section 19, Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

APPROVED:

C. WILLIAM O'NEILL,

Chief Justice

APPENDIX B-2

THE SUPREME COURT OF THE STATE OF OHIO

Dayton Bar Association,
Relator,

vs.

Dan D. Weiner,
Respondent.

1974 TERM
To wit: November 1, 1974
No. DD 74-6
REHEARING

It is ordered by the court that rehearing in this case is denied.

APPENDIX B-3

THE SUPREME COURT OF THE STATE OF OHIO

Dayton Bar Association,
Relator,

vs.

Dan D. Weiner,
Respondent.

1974 TERM
To wit: November 29, 1974
No. DD 74-6
REHEARING

It is ordered by the court that rehearing in this case is denied.

APPENDIX C-1

CHARGES AGAINST PETITIONER

"1. Willful breach of Canon 1, Ethical Consideration 1-5, in that Respondent is guilty of intemperate and undignified conduct in evidencing disrespect for the legal system and for duly acting and qualified judges in the performance of their duties.

"2. Willful breach of Canon 1, Disciplinary Rule 1-102 Misconduct (A)(5) in that Respondent's disrespect for judges as aforesaid and for the legal system as aforesaid constituted conduct that is prejudicial to the administration of justice.

"3. Willful breach of Canon 2, Disciplinary Rule 2-106 Fees for Legal Services (A) in that Respondent entered into agreements for and charged and collected clearly excessive fees for legal services rendered.

"4. Willful breach of Canon 2, Disciplinary Rule 2-110, Withdrawal from employment (A)(2) in that Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client.

"5. Willful breach of Canon 7, Disciplinary Rule 7-106 (C)(6) in that Respondent engaged in undignified and discourteous conduct which was degrading to a tribunal.

"6. Willful breach of Canon 9, Disciplinary Rule 9-102 in that Respondent caused funds of clients to be deposited in bank accounts maintained without the State of Ohio in which were funds belonging to Respondent and in that Respondent converted to his own use trust funds belonging to his clients."

APPENDIX C-2

INTERROGATORIES

Come now Respondent and requests Relator to answer the following Interrogatories, in writing and under oath, within 28 days of the date of service.

1. State with particularity each time and place in which you claim the respondent was guilty of intemperate and undignified conduct in evidencing disrespect for the legal system, and state the exact fact or facts upon which you rely, to support said charge.

2. State the exact time and the identity of the acting and qualified Judges to whom you claim the Respondent was intemperate and undignified and disrespectful and state with particularity the act or acts which you claim support this charge.

3. In charge #2 you claim willful breach of Canon 1, Disciplinary Rule 1-102 Misconduct (A)(5) by the Respondent under circumstances that he engaged in conduct that is prejudicial to the administration of justice. State exactly and in what manner you claim the Respondent violated this provision of Canon 1, and the act or acts that you claim he did which violated this Canon.

4. State with particularity the agreements that you claim the Respondent entered into in which he charged or collected "clearly excessive fees for legal services rendered," and state the amount which you claim was the correct fee for the services rendered and the facts upon which you base this claim.

5. In answering the preceding interrogatory, state exactly and in detail what investigation, research, or interviews of individuals you have made to establish this charge, and give the names and addresses of each person interviewed.

6. State exactly the facts upon which you base Charge #4 that the Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of his client, and give the name of each client whom you claim was affected by such withdrawal.

7. State when and where you claim the Respondent breached Canon Rule 7-106 (C) (6), and state in detail the undignified and discourteous conduct which you claim the Respondent was guilty of, and in what manner you claim the same discredited the tribunal, and further state the name of the tribunal or tribunals before whom this Respondent so behaved.

8. Do you claim in Charge #6 that this Respondent converted money of his clients to his own use?

9. If your answer to the above interrogatory is in the affirmative, state the names of the clients and the amount of money which you claim was converted.

10. Further, in amplification of Charge #6, state whether you claim a deposit in trust funds in a bank out of the State of Ohio had some improper or ulterior motive.

11. If your answer to Interrogatory #10 is in the affirmative, state the evidence upon which you rely to establish this fact.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Interrogatories has been served upon Richard G. Snell, Counsel for Relator, at 2260 Winters Bank Building, Dayton, Ohio 45402, by mailing same to him by regular U.S. Mail, postage prepaid, this 5 day of June, 1973.

DAN D. WEINER
Attorney for Respondent

APPENDIX C-3
CANONS - INVOLVED

DR 2-106 Fees for Legal Services.
(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

DR 2-110 Withdrawal from Employment.
(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.[145]

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) Permissive withdrawal.

If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

DR 9-102 Preserving Identity of Funds and Property of a Client.

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.